

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

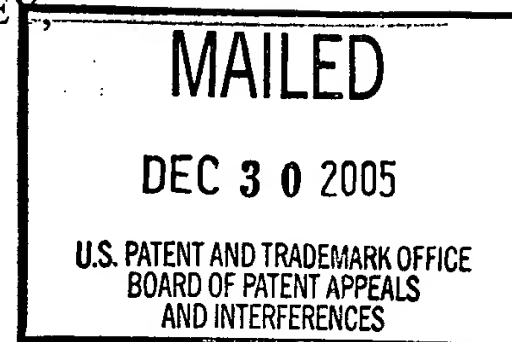
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Ex parte MARTIN F. ARLITT, JOHN A. DILLEY,  
RICHARD J. FRIEDRICH, TAI Y. JIN  
and STEPHANE J. PERRET

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Application No. 09/368,635

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was received at the Board of Patent Appeals and Interferences on November 17, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below.

**NOTICE OF APPEAL**

A Notice of Appeal was filed in response to the Final Rejection mailed March 24, 2004 on July 28, 2004. Any response to the Final Rejection was due within three (3) months of the

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date of mailing of the final rejection, therefore the Notice of Appeal was due no later than June 24, 2004. As the Appeal Brief was not timely filed, an extension of time fee is required. The appellant authorized that any required extension of time fee's could be charged to Deposit Account No. 08-2025. An extension of time fee of \$400.00 needs to be charged to Deposit Account No. 08-2025.

### **EXAMINER'S ANSWER**

On August 8, 2005, an Examiner's Answer was mailed. A review of the Examiner's Answer reveals that the information contained therein pertaining to the required appeals conference is not in compliance with the Manual of Patent Examining Procedure (MPEP)§ 1208 (8th ed., rev. 1, Feb. 2003).

According to MPEP § 1208:

The participants of the appeal conference should include (1) the examiner charged with preparation of the examiner's answer, (2) a supervisory patent examiner (SPE), and (3) another examiner, known as a conferee, having sufficient experience to be of assistance in the consideration of the merits of the issues on appeal.

On the examiner's answer, below the primary examiner's signature, the word "Conferees:" should be included, followed by the type or printed names of the other two appeal conference participants. These two appeal conference participants must place their initials next to their name. This will make the record clear that an appeal conference has been held.

The Examiner's Answer was not initialed or signed by Larry Donaghue who was one of the conferee's listed. Furthermore, the Examiner's Answer does not comply with the headings as set forth in the new rules under 37 CFR 41.37(c). Correction is required.

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REPLY BRIEF

A Reply Brief in response to the Examiner's Answer dated August 8, 2005, was filed on October 11, 2005. However, a review the Image File Wrapper (IFW) reveals that the Reply Brief has not been considered or acknowledged by the examiner.

A written communication notifying appellant of the Examiner's receipt and consideration of the Reply Brief is required.

Accordingly, it is

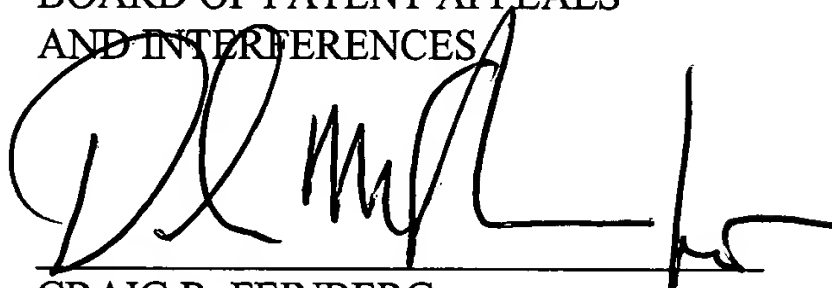
ORDERED that the application is returned to the examiner to:

- 1) have Notice of Appeal fee (\$400) charged to Deposit Account No. 08-2025;
- 2) to obtain the conferee's initials or signature on the Examiner's Answer;
- 3) written notification of said initials or signature to appellants;
- 4) to issue a revised Examiner's Answer in accordance with the rules effective September 13, 2004;

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- 5) acknowledgment and consideration of the Reply Brief filed October 11, 2005 is required; and
- 6) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

A handwritten signature in black ink, appearing to read 'C. R. Feinberg', written over a horizontal line.

CRAIG R. FEINBERG  
Program and Resource Administrator  
(571)272-9797

CRF/dpv

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Hewlett Packard Company  
Intellectual Property Administration  
3404 E. Harmony Road  
P.O. Box 272400  
Fort Collins, Co. 80528-9599